IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1273 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

GUJARAT STATE FINANCE CORPORATION

Appearance:

1. Special Civil Application No. 1273 of 1999

MR BS PATEL for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1-2

MS NANDINI JOSHI, AGP for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/08/2001

ORAL JUDGEMENT

Rule. Mr HS Munshaw, learned counsel waives service of Rule for respondent Nos. 1 and 2. Ms Nandini Joshi, learned AGP waives service of Rule for respondent No. 3.

2. Ms Nandini Joshi, learned AGP appearing for the Land Acquisition Officer, respondent No. 3 herein seeks leave to produce on record a map prepared by the Head Surveyor in the office of the Additional District Inspector of Land Records (Narmada), Unit I, Vadodara alongwith a copy of the letter dated 30.7.2001 from that Officer to the Land Acquisition Officer and a copy of village Form No. 7/12 in respect of the land bearing Block No. 1739.

3. The aforesaid documents are taken on record. A perusal of the map shows that the middle portion of the land sold by the GSFC to the petitioner has been acquired including a part of the constructed property.

4. Mr BS Patel, learned counsel for the petitioner submits that the GSFC had sold the land in question to the petitioner by issuing tender-cum-sale letter dated 27.6.1997 and put the petitioner into possession on 19.7.1999 and as against the sale price of Rs.12,25,000/-, the petitioner had already paid Rs.7,35,000/- by 31.12.1998. However, subsequently it has transpired that a substantial part of the land in the middle portion has been acquired including the land having constructed property and, therefore, apart from the fact that the petitioner will not be able to carry on his business on the land in question in future, even in the past the petitioner could not get finance for working capital in view of the fact that a part of the land was under acquisition. Mr Patel further submits that as per the particulars given by the learned AGP today, the notification under Section 4 of the Land Acquisition Act was published in the official gazette on 8.8.1996 well before the GSFC sold the land to the petitioner and, therefore, the GSFC ought to have brought this fact to the notice of the petitioner that the land was under acquisition.

5. On the other hand, Mr Munshaw, learned counsel for the GSFC opposes the petition and submits as under :-

(i) When the land and the constructed property were mortgaged by the previous owner, the land was not under acquisition. Hence, the GSFC was not aware about any such land acquisition proceedings.

(ii) Neither the previous owner had informed the GSFC about the land acquisition proceedings which commenced on 8.8.1996 upon publication of the notification under Section 4 of the Land Acquisition Act in the official gazette nor did

the GSFC receive any intimation from the Land Acquisition Officer although the GSFC had got charge over the property in question.

(iii) In the advertisement inviting offers at public auction, it was made clear that the property was being sold on `as is where is' basis and, therefore, it was for the prospective buyer to make inquiries about the title to the property and it was not a part of duty of the GSFC to make such inquiries.

(iv) As on 1.5.2000 the petitioner's dues to the respondent Corporation were Rs.8,67,476/inclusive of interest and, therefore, the GSFC is entitled to proceed to make recovery by exercising its powers under Section 29 of the State Financial Corporations Act, 1950.

6. Ms Nandini Joshi, learned AGP appearing for the Land Acquisition Officer states that in respect of the land in question, Schedule "C" to the award in Case No. 86 of 1997 contains the names of following persons who are shown as persons entitled to get the compensation of Rs.1,22,522/- :-

1. Patel Ambalal Motibhai
2. Kanubhai Ambalal
3. Satishbhai Ambalal

The compensation is for acquisition of non-agricultural land admeasuring 1960 sq.mtrs. equivalent to 21110 sq.ft.

The learned AGP further submits that since respondent No. 3-Land Acquisition Officer has not acted illegally and no relief is prayed for against respondent No. 3, the petitioner may be directed to pay the costs to respondent No. 3 for these proceedings.

7. In rejoinder, Mr BS Patel for the petitioner submits that the petitioner is prepared to hand over possession of the properties including land and building to the GSFC if the amount of Rs.7,35,000/- paid by the petitioner to the GSFC is refunded by the GSFC to the petitioner.

8. Having heard the learned counsel for the parties, it appears to the Court that since the dispute between the parties, particularly the petitioner herein and the respondent-GSFC is in the realm of disputed questions of

fact and also the question about contractual and property rights of the parties, it would be in the fitness of things to relegate the parties to an alternative remedy before a Civil Court. However, in order to see that no final steps are taken by any of the parties, it would be just and proper to dispose of this petition in terms of the following directions :-

(i) For a period of three months from today, the respondent-GSFC shall not take any coercive action against the petitioner for enforcement of its dues.

(ii) The Land Acquisition Officer, respondent No. 3 herein, shall not disburse the amount of compensation for the land admeasuring 1960 sq.mtrs. which is a part of the land which was sold by the GSFC to the petitioner in the year 1997, if the compensation is not paid by the respondent No. 3 so far. The disbursement shall not be made except in accordance with the final or interim directions which may be given by the Civil Court in a suit which may be filed by the petitioner herein.

(iii) It will be open to the parties to raise all contentions available to them and it is clarified that this Court has not gone into the merits of the rival contentions raised on behalf of the petitioner and the respondent-Corporation.

(iv) If such a suit is filed after giving a statutory notice, if required, and within 15 days after the notice period, the trial Court shall hear and decide the same as expeditiously as possible and preferably within six months from the date of filing the suit.

(v) The petitioner shall pay the costs of this petition to respondent No. 3, which are quantified at Rs.1,500/- (Rupess One thousand five hundred only) within one month from today.

9. The petition is accordingly disposed of in terms of the aforesaid directions. Rule is discharged.

(M.S. Shah, J.)
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